

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**Case No. 8:03-CR-77-T-30TBM**

**HATIM NAJI FARIZ**  
\_\_\_\_\_ /

**MOTION TO COMPEL CLARIFICATION OF SECOND MOTION  
OF THE UNITED STATES FOR A PRETRIAL CONFERENCE  
AND A PROTECTIVE ORDER PURSUANT TO THE  
CLASSIFIED INFORMATION PROCEDURES ACT**

Defendant, Hatim Naji Fariz, by and through undersigned counsel, hereby respectfully requests this Honorable Court to compel the government to clarify the nature of the “classified information” at issue, at least in general terms, in the government’s second motion under the Classified Information Procedures Act (“CIPA”), 18 U.S.C. app. III. As grounds in support, Mr. Fariz states:

1. On July 7, 2003, the government filed its first motion for a pretrial conference under CIPA. (Doc. 168). The classified information at issue consisted of the intercepted communications pursuant to the Foreign Intelligence Surveillance Act (“FISA”) that had been recorded by the government but not alleged in the Indictment. Subsequent to this request, the government declassified the FISA intercepts.

3. On July 14, 2004, the government filed its second request for a pretrial conference and a protective order under CIPA. (Doc. 574). The government’s only descriptions of the materials involved are: (1) “[t]he government has now located additional

classified documents it wishes to produce for the court pursuant to CIPA,” (2) “the defendants have made a number of discovery requests and counsel for the United States has concluded that classified information may arise in connection with the prosecution of the case,” and (3) “the United States has concluded that certain classified information may be discoverable.” (Doc. 574 at 1 n.1, 2-3). The government failed to provide any further description, even in general terms, of the nature of this “classified information.”

4. The government has yet again proposed a Protective Order that is virtually identical to the protective order entered in *United States v. Moussaoui*, No. 1:01-CR-00455 (E.D. Va.), including the restriction that this classified information not be disclosed to the Defendants and several other logistical restrictions that will impede the defense’s ready preparation of this case for trial. *See* Doc. 574 at 7 (“The government’s proposed order is patterned after the Moussaoui order.”). This Court, during the CIPA hearing on August 6, 2003, expressed doubt over whether the restrictive nature of this order was appropriate, where the materials at issue were the conversations of the Defendants themselves. Even the government indicated during this hearing that the *Moussaoui* order may not be appropriate in this case, citing (1) the competing considerations of the public interest, the Defendants’ right to information, and that any order would have to allow the parties to be ready for trial in January 2005; (2) circumstances that had changed since they made their initial request, including that Sami Al-Arian was then proceeding *pro se* and that Mr. Fariz and Ghassan Ballut objected to the terms of the protective order; and (3) the constitutional and practical

issues that were involved.<sup>1</sup> The government then asked for additional time for the Department of Justice to consider these issues. The FISA intercepts were then declassified.

5. While Mr. Fariz intends to respond substantively to the government's motion, his ability to respond adequately is hampered by the fact that the government failed to indicate in its motion the general nature of the "classified information."<sup>2</sup> This information is necessary in order to effectively respond to the government's contention that this information should not be shared with Mr. Fariz and to the government's logistical restrictions placed in the proposed protective order. This information is also sought in light of the government's request that defense counsel complete, or update, the SF-86 for security clearances.

6. Specifically, Mr. Fariz requests that the government be compelled to indicate:  
(a) the general nature of the materials (*i.e.*, whether they are being produced to the defense under Federal Rule of Criminal Procedure 16, *Brady v. Maryland*, 373 U.S. 83 (1963), or

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<sup>1</sup> The hearing held on August 6, 2003 has apparently not been transcribed. This summary is based on the undersigned's notes taken at the hearing.

<sup>2</sup> Mr. Fariz's informal attempts to clarify this issue with the government failed; the undersigned counsel contacted the government and was told that the government could not describe the nature of materials without undersigned counsel having a security clearance. The undersigned counsel, in accordance with this Court's Order, submitted the clearance forms on July 7, 2003. Over a year later, the government has failed to complete its investigation, despite the government's representation that classified materials were always a possibility. The undersigned has learned from a representative at the U.S. Department of Justice that the government discontinued its background investigation.

some other authority); (b) the volume of the materials; (c) whether the information is in a foreign language; and (d) whether the government anticipates, as with its previous request, it will be declassifying this material prior to trial.

7. Because this information is necessary for Mr. Fariz to provide an informed response to the government's second CIPA motion, Mr. Fariz would also request that his deadline to respond be set for five business days after the date the government would be required to clarify its motion.

WHEREFORE, Mr. Fariz respectfully requests that this Honorable Court compel the government to clarify the materials at issue in its second request for a pretrial conference and protective order under the Classified Information Procedures Act.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28th day of July, 2004, a true and correct copy of the foregoing has been furnished by hand delivery and by electronic filing to Terry Zitek, Assistant United States Attorney, 400 North Tampa Street, Suite 3200, Tampa, Florida 33602 and to the following by U.S. Mail:

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